

FILED
OFFICE OF THE CITY CLERK
OAKLAND

**REDEVELOPMENT AGENCY
AND THE CITY OF OAKLAND**

2010 JUN 30 AM 10: 54

AGENDA REPORT

TO: Office of the City/Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: July 13, 2010

RE: **An Agency Resolution Amending Resolution No. 2010-0040 C.M.S. To Increase The Affordability Level, In The Event Of A Foreclosure, From 50% To 60% Of Area Median Income For The Lion Creek Crossings Phase IV Rental Project Located At 69th Avenue And Snell Street, To Be Developed By The East Bay Asian Local Development Corporation And The Related Companies Of California Jointly**

A City Resolution Amending Resolution No. 82652 C.M.S. To Increase The Affordability Level, In The Event Of a Foreclosure, From 50% To 60% Of Area Median Income For The Lion Creek Crossings Phase IV Rental Project Located At 69th Avenue And Snell Street To Be Developed By The East Bay Asian Local Development Corporation And The Related Companies Of California Jointly

SUMMARY

Staff is recommending that the City Council and Redevelopment Agency adopt two resolutions to allow the East Bay Asian Local Development Corporation ("EBALDC") and the Related Companies of California ("Related"), jointly the developers of the Lion Creek Crossings Phase IV Rental Project located at 69th Avenue and Snell Street, to increase the affordability level for rental units from 50% to 60% of Area Median Income in the event of foreclosure. The first resolution authorizes the Agency to amend Resolution No. 2010-0040 C.M.S. to increase the affordability level, in the event of a foreclosure, from 50% to 60% of area median income for the Lion Creek Crossings Phase IV Rental Project. The second resolution authorizes the City Administrator to amend Resolution No. 82652 C.M.S. to make the same changes on the City's loan commitment.

FISCAL IMPACT

The changes requested per the recommendations in this report do not present any additional fiscal impacts.

BACKGROUND

Lion Creek Crossings Phase IV, located on 69th Avenue at Snell Street, is the fourth phase of affordable rental housing proposed under the Coliseum Gardens Master Plan (now referred to as Lion Creek Crossings). The Oakland Housing Authority owns the vacant land and will provide a

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CED Committee
July 13, 2010

long-term ground lease to the project owners, Village Side Housing Partners, L.P., a limited partnership between EBALDC and Related. Lion Creek Crossings Master Plan Phases I, II and III are now completed and are renting to the intended income target populations.

In the Fall of 2007, EBALDC and Related jointly submitted a Notice of Funding Availability (NOFA) proposal for Phase IV. The original proposal provided for the construction of 72 multi-family apartments (71 income restricted units and one manager's unit) with construction scheduled to begin sometime in 2009. The unit mix consisted of 16 one-bedroom units, 28 two-bedroom units, and 28 three bedroom units, and over 3,500 square feet of social service and community room space. The units were restricted at 30% to 50% Area Median Income rent levels.

On March 4, 2008, the Redevelopment Agency and the Oakland City Council awarded a total of \$6.4 million to EBALDC and Related to assist with the predevelopment and construction expenses via Council Resolution No. 81111 C.M.S., which authorized an affordable housing development loan in an amount not to exceed \$3,499,453, and Agency Resolution No. 2008-0023 C.M.S., which authorized an Agency loan not to exceed \$2,980,547 for the project.

After the award of these 2007/2008 NOFA funds, the project team experienced a few set-backs, including an unexpected environmental soil remediation problem, which was resolved; however the timing coincided with the dramatic downturn of the real estate market.

As a result of these issues, the developers were unable to close the City and Agency loans within the eighteen month reservation period and requested an extension of the \$6.4 million as part of the City's 2009 NOFA process. This request was granted on March 17, 2010 via Council Resolution No. 82652 C.M.S. and Agency Resolution No. 2010-0040 C.M.S., which extended by eighteen (18) months the period funds are reserved for the project. Once the Agency/City loans close on this project, which is estimated to be no later than the end of August 2010, construction will commence shortly thereafter.

KEY ISSUES AND IMPACTS

Lion Creek Crossings Phase IV is one of four rental phases of a mixed income/replacement public housing HOPE VI project completed in partnership with the Oakland Housing Authority ("OHA"). A total of 178 units of substandard public housing were demolished and replaced with 364 new units of restricted affordable housing in the first three phases.

In the original 2007 NOFA application, EBALDC and Related proposed a project structure to include 71 project units in Phase IV at rent levels affordable to households earning no more than 30% to 50% of Area Median Income ("AMI"). Twenty-one of these units are considered OHA replacement units (referred to as "ACC units"). Both the City and Agency resolutions reflect a rental structure with maximum rents restricted to 50% AMI households. However, since the submittal of the initial proposal and subsequent award of funds, the developers were challenged on several fronts, including but not limited to, 1) the timing of each phase of development, 2)

delays in the creek design and restoration of a relocated City park, 3) unanticipated environmental remediation and 4) being a heavily leveraged HOPE VI deal.

A contributing factor to the request for a 60% AMI level is the State's unprecedented financial crisis, which presented the developers with a unique challenge of securing construction and permanent financing. At the time of the 2007 application, the developers expected that California Housing Finance Agency ("CalHFA") would provide the construction loan and permanent first mortgage financing, as they had done on each of the three previous project phases. As a public lender with a mission to assist with the production of affordable housing, CalHFA did not require regulatory subordination from junior lenders. Thus, CalHFA was the first choice for lending on this phase. Unfortunately, due to CalHFA's poor credit rating (from their exposure in the single family home industry in California), they are unable to sell bonds at this time and have therefore curtailed their multifamily lending program.

When it was determined that CalHFA financing was not available, the development team approached the following lenders before settling on California Community Reinvestment Corporation ("CCRC"), the only lender with competitive terms and the only one willing to make a permanent loan on this project:

1. **Chase Bank** originally provided a commitment letter for construction and permanent debt and equity for the deal. However, Chase's equity position eroded as the developers tried to negotiate terms, and the amount of equity they would be willing to put into the development dropped by nearly 15% due to the bank's lack of capacity to work on direct equity investments, and need to involve a syndicator. The drop in equity pricing made the deal infeasible, as there would not have been enough to cover project costs;
2. **US Bank** originally indicated interest in providing construction and permanent debt and equity for the deal. However, its pricing was also too low to cover project costs. US Bank was also concerned with foreclosure scenarios, so it is likely they would have asked for concessions similar to CCRC had Related selected them as the permanent lender;
3. **Bank of America** provided a commitment letter for construction debt only. They were not interested in providing permanent debt to the project. Many of their underwriting questions have focused on what would happen if the project went into foreclosure, reflecting the overall cautionary and conservative environment that banks are currently operating in; and
4. **Citibank** was contacted to gauge its interest in providing construction and permanent financing. Citibank was interested in construction debt and a syndicated equity partnership but not in permanent financing for the deal.

Finally, Related was able to leverage its relationship from a number of previous deals with CCRC in order to obtain the remaining permanent financing for the project.

According to CCRC, the current project as originally proposed would not pass their loan committee's review. The original proposal includes 71 restricted rental units, of which 21 units (29%) are restricted as ACC public housing units for 40 years, subject to a HUD regulatory and operating agreement, affordable to households earning no more than 30% Area Median Income, and another 10 units have ten-year project based section 8 contracts.

In order to proceed with the transaction, CCRC is requiring the following changes to the original terms to underwrite the value of the property as a permanent lender:

1. In the unlikely event of foreclosure, the City would agree to allow CCRC to raise rents on 45 of the remaining 50 non-ACC units to levels affordable to households at 60% AMI; and
2. This transition to 60% AMI levels would occur over a three year period.

CCRC's rationale for requiring all but five of the non-ACC units to have the flexibility to go to 60% AMI rents over three years in case of foreclosure is two-fold. First, the lending climate has changed dramatically since the developer secured and closed financing for the other three phases of Lion Creek Crossings. There are fewer lenders (for example, CalHFA) who are willing to provide long term permanent loans for affordable housing projects and underwriting requirements have become more conservative as lenders evaluate the risk of catastrophic events like foreclosure. They claim that most conventional lenders are demanding to be in first position ahead of all regulatory restrictions. Secondly, this project is highly leveraged. Twenty-nine percent of the units (21) are ACC units that are governed by a HUD regulatory and operating agreement that is not allowed to be subordinated to any other lender. As such, the net operating income for this project is already compromised and CCRC needs the flexibility (in the event of foreclosure) to rely upon the other units (all but five) being leased at 60% AMI in order to service their debt in the event of a foreclosure.

Although the amount of the permanent loan is small in comparison to the total development costs (approximately \$1,177,100 with total development costs of nearly \$36 million), it is a significant piece in closing the permanent loan gap. The foreclosure scenario is unlikely to occur and would only affect 45 non-ACC units. The 21 ACC units and five additional units restricted to 50% AMI households will not be affected, and the City/Agency Regulatory Agreement would also survive a foreclosure on the CCRC loan.

The City/Agency will also have cure rights to take out the CCRC loan in the event of a threatened foreclosure action.

Both the City and Agency support the final phase of the Lion Creek master plan, especially since the phases completed to date have had a significant positive impact on the surrounding neighborhood by creating clean, safe and habitable affordable housing opportunities and services. The State of California is experiencing unprecedented financial difficulties, and unfortunately the development's available funding sources have been negatively impacted by the

general financial climate. The completion of the fourth phase of mixed income/replacement public housing and the addition of 72 affordable housing family units is significant to the community, as are the relatively high paying construction jobs that will be provided for the duration of the construction process. It is for these reasons that this unusual request warrants special consideration and final approval.

SUSTAINABLE OPPORTUNITIES

Economic: Lion Creek Crossing Phase IV has leveraged Federal, State and Private funding sources for the development of affordable housing in Oakland. The proposed construction of 72 multi-family units will be required to provide local and first source hiring jobs.

Environmental: By developing and completing Phase IV, the project will further the City's sustainable development goal of promoting infill development, and clean up additional brownfields in East Oakland.

Social Equity: Affordable housing development promotes social equity through the provision of housing to low-income households. In this case, housing will be provided for low income families who wish to remain in their community and who otherwise would not be able to afford to live in the Metropolitan Bay Area.

DISABILITY AND SENIOR CITIZEN ACCESS

The Housing Development program actively works with developers to assure that multifamily developments include units for people with disabilities per applicable State and Federal laws, and to provide affordable housing for seniors.

RECOMMENDATION AND RATIONALE

It is recommended that the Redevelopment Agency and City Council adopt the attached resolutions to allow the developers, East Bay Asian Local Development Corporation and the Related Companies of California jointly to increase the affordability level from 50% to 60% AMI, in the event of foreclosure, for the Lion Creek Crossings Phase IV Rental Project located at 69th Avenue and Snell Street.

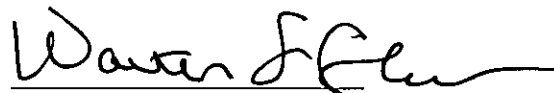
ACTION REQUESTED OF THE CITY COUNCIL

The following actions are requested of the Redevelopment Agency and City Council:

1. Adopt an Agency Resolution Amending Resolution No. 2010-0040 C.M.S. To Increase The Affordability Level, In The Event Of A Foreclosure, From 50% To 60% Of Area Median Income For The Lion Creek Crossings Phase IV Rental Project Located At 69th Avenue And Snell Street, To Be Developed By The East Bay Asian Local Development Corporation And The Related Companies Of California Jointly

2. Adopt a City Resolution Amending Resolution No.82652 C.M.S. To Increase The Affordability Level, In The Event Of A Foreclosure, From 50% To 60% Of Area Median Income For The Lion Creek Crossings Phase IV Rental Project Located At 69th Avenue And Snell Street, To Be Developed By The East Bay Asian Local Development Corporation And The Related Companies Of California Jointly

Respectfully submitted,

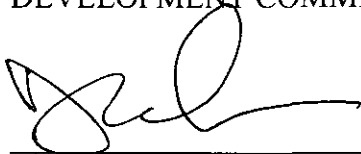


Walter S. Cohen, Director
Community and Economic Development Agency

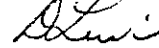
Reviewed by: Michele Byrd, Deputy Director
Housing and Community Development

Prepared by: Antoinette Pietras, Housing Development
Coordinator, Housing and Community Development
Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



Office of the City/Agency Administrator



2010 JUN 30 AM 10:54

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

AN AGENCY RESOLUTION AMENDING RESOLUTION NO. 2010-0040 C.M.S. TO INCREASE THE AFFORDABILITY LEVEL, IN THE EVENT OF A FORECLOSURE, FROM 50% TO 60% OF AREA MEDIAN INCOME FOR THE LION CREEK CROSSINGS PHASE IV RENTAL PROJECT LOCATED AT 69TH AVENUE AND SNELL STREET, TO BE DEVELOPED BY THE EAST BAY LOCAL DEVELOPMENT CORPORATION AND THE RELATED COMPANIES OF CALIFORNIA JOINTLY

WHEREAS, in the fall of 2007, the East Bay Asian Local Development Corporation and The Related Companies of California jointly (the "Developers") submitted a NOFA proposal for Lion Creek Crossings, Phase IV, one of four rental phases of a mixed income/replacement public housing HOPE VI project developed in partnership with the Oakland Housing Authority ("OHA") for the construction of 72 multi-family apartments; and

WHEREAS, on March 4, 2008, by Agency Resolution No. 2008-0023 C.M.S., the Redevelopment Agency of the City of Oakland (the "Agency") approved funds in the amount of \$2,980,547 to assist with the Phase IV predevelopment and construction expenses; and

WHEREAS, after the award of the 2007 NOFA funds, the project team experienced set-backs including environmental problems at the project site, and the dramatic downturn in the world financial markets that rendered the Developers unable to close the Agency loans within the eighteen months reservation period, and they were therefore granted an extension on March 17, 2010 by Agency Resolution No. 2010-0040 C.M.S.; and

WHEREAS, the original project structure included 71 project units at rent levels affordable to households earning no more than 30% to 50% of Area Median Income ("AMI") with twenty-one of these units considered OHA replacement units (referred to as "ACC units"); and

WHEREAS, due to set-backs, including the State of California's unprecedented financial crisis, the developers were not able to secure financing from the California Housing Finance Agency, as they had in the past, and faced a unique challenge in securing construction and permanent financing for Phase IV; and

WHEREAS, the development team approached five lenders before settling on California Community Reinvestment Corporation, the only lender willing to make a permanent loan on this project on competitive terms; and

WHEREAS, those terms require changing the original terms so that in the unlikely event of foreclosure, the permanent lender could raise rents on 45 of the 50 non-ACC units to levels affordable to households at 60% AMI; and

WHEREAS, the Agency believes that the financing from California Housing Finance Agency is critical for the completion of the Lion Creek Crossings Phase IV project, which will provide sorely needed affordable housing units in East Oakland; now, therefore, be it

RESOLVED: That the Agency hereby approves an increase in affordable rent levels in the event of foreclosure, so that 45 of the 50 non-ACC units are affordable to households earning no more than 60% of Area Median Income; and be it

FURTHER RESOLVED: That this transition to 60% AMI levels will occur over a three year period; and be it

FURTHER RESOLVED: That the Agency Administrator or his designee is authorized to negotiate and execute, amend and extend any agreements, and take any other actions consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That all documents executed pursuant to this action shall be reviewed and approved by Agency Counsel for form and legality prior to execution, and copies will be placed on file with the Agency Secretary

IN AGENCY, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON BRUNNER

NOES -

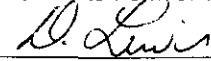
ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
Secretary, Redevelopment Agency of
the City of Oakland, California

2010 JUN 30 AM 10: 54



Deputy City Attorney

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

A CITY RESOLUTION AMENDING RESOLUTION NO. 82652 C.M.S. TO INCREASE THE AFFORDABILITY LEVEL, IN THE EVENT OF A FORECLOSURE, FROM 50% TO 60% OF AREA MEDIAN INCOME FOR THE LION CREEK CROSSINGS PHASE IV RENTAL PROJECT LOCATED AT 69TH AVENUE AND SNELL STREET, TO BE DEVELOPED BY THE EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION AND THE RELATED COMPANIES OF CALIFORNIA JOINTLY

WHEREAS, in the Fall of 2007, East Bay Asian Local Development Corporation and The Related Companies of California jointly (the "Developers") submitted a Notice of Funding Availability ("NOFA") proposal for Lion Creek Crossings, Phase IV, one of four rental phases of a mixed income/replacement public housing HOPE VI project developed in partnership with the Oakland Housing Authority ("OHA") for the construction of 72 multi-family apartments; and

WHEREAS, on March 4, 2008, by City Resolution 81111 C.M.S., the Oakland City Council (the "Council") approved funds in the amount of \$3,499,453 to assist with the Phase IV predevelopment and construction expenses; and

WHEREAS, after the award of these 2007/2008 NOFA funds, the project team experienced a few set-backs including unexpected environmental soil remediation, which coincided with the dramatic downturn of the real estate market that rendered the Developers unable to close the City loans within the eighteen months reservation period, and they were therefore granted an extension on March 17, 2010 by City Council Resolution No. 82652 C.M.S.; and

WHEREAS, the original project structure proposed 71 project units at rent levels affordable to households earning no more than 30% to 50% of Area Median Income ("AMI") with twenty-one of these units considered OHA replacement units (referred to as "ACC units"); and

WHEREAS, the Developers expected that the California Housing Financial Agency ("CalHFA") would provide the construction and permanent first mortgage financing, as it had done for each of the three previous project phases, but due to the State of California's unprecedented financial crisis and CalHFA's poor credit rating, was unable to sell bond, curtailing its multifamily lending program; and

WHEREAS, the Developers were thus presented with the unique challenge of financing the construction and permanent loans for Phase IV; and

WHEREAS, the development team approached five lenders before settling on California Community Reinvestment Corporation, the only lender willing to make a permanent loan on this project on competitive terms; and

WHEREAS, those terms require changing the original terms so that in the unlikely event of foreclosure, the permanent lender could raise rents on 45 of the 50 no-ACC units to levels affordable to households at 60% AMI; and

WHEREAS, the Council believes that the financing from California Housing Finance Agency is critical for the completion of the Lion Creek Crossings Phase IV project, which will provide sorely needed affordable housing units in East Oakland; now, therefore, be it

RESOLVED: That the Council hereby approves an increase in affordable rent levels in the event of foreclosure, so that 45 of the 50 non-ACC units are affordable to households earning no more than 60% AMI; and be it

FURTHER RESOLVD: That in the event of foreclosure, this transition to 60% AMI levels will occur over a three year period; and be it

FURTHER RESOLVED: That the City Administrator or his designee is authorized to negotiate and execute, amend and extend any agreements, and take any other actions consistent with this Resolution and its basic purposes; and be it

FURTHER RESOLVED: That all documents executed pursuant to this action shall be reviewed and approved by the City Attorney for form and legality prior to execution, and copies will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California